UNITED STATES D	DISTRICT COURT
FOR THE DISTRICT O	OF MASSACHUSETTS
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SHARON SEAVEY,	* .\ au ander!
Plaintiff	TRATE JUDGE Alexander,
MIMOIO	*
V.	* C. A. No.
	*
RICHARD P. McCOY, Partner, COLLEY	*
McCOY COMPANY and COLLEY/McCOY	*
MANAGEMENT GROUP, INC.,	* JURY TRIAL DEMANDED
Defendants	* RECEIPT # 66808
	* AMOUNT \$ \partial 50
***************	****** SUMMONS ISSUED 4
	LOCAL RULE 4.1
COMPI	WAIVER FORM
COMPL	PLAIN I MCF ISSUED
	BY DPTY CLK FOW

Plaintiff SHARON SEAVEY ("Seavey") is an individual residing at 56 Adams Street,
 Haverhill, Essex County, Massachusetts.

PARTIES

- Defendant RICHARD P. McCOY, Partner, COLLEY McCOY COMPANY ("McCoy")
  is a partnership with its principal place of business at One Industrial Drive,
  Windham, New Hampshire.
- Defendant COLLEY/MCCOY MANAGEMENT GROUP, INC. ("Colley/McCoy"), is
  a corporation duly organized under the laws of the State of New Hampshire, with
  its principal place of business at One Industrial Drive, Windham, New Hampshire.

## JURISDICTION

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1332 in that plaintiff is a citizen of the Commonwealth of Massachusetts, defendants are citizens of the State of New Hampshire, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

## FACTS COMMON TO ALL CLAIMS

- 5. At all times relevant hereto, defendants McCov and Colley/McCov were the operators of the McDonald's Restaurant (the "Restaurant) at 795 River Street, Haverhill, Massachusetts, and were duly licensed to operate a restaurant at that location by the Board of Health of the City of Haverhill.
- 6. At all times relevant hereto, defendants McCoy and Colley/McCoy were under a duty to maintain the Restaurant premises free from rodent infestations.
- 7. On or about September 27, 2001, the plaintiff was a customer at the Restaurant.
- 8. After completing her meal, the plaintiff attempted to dispose of her trash at the receptacle provided for that purpose at the Restaurant.
- 9. Because the container was overflowing with trash, the plaintiff had to push her trash into the container.
- 10. As she attempted to dispose of her trash, the plaintiff was bitten on her hand by a large rat.
- 11. The existence of rats at the Restaurant is noted in the Board of Health records as early as October, 1998.
- 12. When the Restaurant premises were inspected on October 1, 2001, it was noted that "Tunnels and paths were observed in the grass. A tunnel was also observed under a receptacle."
- 13. A Pest Management Report, dated 10/02/01, prepared by Modern Pest Services. indicates that as of that date, it had taken action "to start a comprehensive rodent control program."
- 14. The Board of Health records, and the patently visible evidence of infestation at the

Restaurant, indicate that this was a long-standing problem of which defendants were aware, but did not properly address.

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- 15. Defendants McCov and Colley/McCov were under a duty to operate the Restaurant in a safe, prudent and careful manner.
- Defendants McCoy and Colley/McCoy breached said duty by operating the 16. Restaurant in a careless, negligent and reckless manner.
- Defendants McCoy and Colley/McCoy were under a duty to maintain the Restaurant 17. premises free from rodent infestations.
- Defendants McCoy and Colley/McCoy knew, or should have known, that there were 18. rodents in the area which would be attracted to the waste food and trash which were generated by the Restaurant.
- 19. Defendants McCoy and Colley/McCoy, despite this knowledge, failed to warn their customers, including the plaintiff, of the existence of this rodent infestation, and the danger posed by this condition.
- 20. Defendants McCoy and Colley/McCoy knew, or should have known, that there only way to protect their customers at the Restaurant from rodents was by instituting a comprehensive rodent control program.
- 21. Defendants McCoy and Colley/McCoy, in failing to do all of the foregoing acts. deviated from accepted standards in the field of restaurant management and sanitation.

## FIRST CLAIM

- Plaintiff realleges paragraphs 1 through 21. 22.
- 23. As a direct and proximate result of defendants McCoy and Colley/McCoy's

negligence, carelessness, recklessness, the plaintiff was caused to suffer severe pain of body and anguish of mind.

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#### SECOND CLAIM

- 24. Plaintiff realleges paragraphs 1 through 23.
- Defendants McCoy and Colley/McCoy engaged in unfair and deceptive acts or 25. practices under G.L. c. 93A, §2, in the operation of the Restaurant, in violation of 940 CMR 3.00, and in violation of 105 CMR 590.00, the Federal Food Code:

## FC 5-501.13 Receptacles

(A) Except as specified in paragraph (B) of this section, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insectand rodent-resistant, leakproof, and nonabsorbent.

#### FC 5-501.15 Outside Receptacles

- (A) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tightfitting lids, doors or covers.
- (B) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

#### FC 5-501.110 Storing Refuse, Recyclables, and Returnables

Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

#### FC 5-5-1.111 Areas, Enclosures, and Receptacles, Good Repair

Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

## FC 5-501.116 Cleaning Receptacles

(B) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a build up of soil or becoming attractants for insects and rodents.

## FC 5-502.11 Frequency (of Removal)

Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable orders and other conditions that **attract or harbor insects and rodents**.

#### FC 6-501.111 Controlling Pests

The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

- (B) Routinely inspecting the premises for evidence of pests;
- (C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under sections 7-202.12, 7-206.12, and 7-206.13; and
- (D) Eliminating harborage conditions.

## FC 6-501.114 Maintaining Premises, Unnecessary Items and Litter

The premises shall be free of: (B) Litter.

- 26. Under Massachusetts General Laws Chapter 93A, §2 (c), the Attorney General of the Commonwealth has promulgated regulations, interpreting unfair or deceptive acts or practices, which appear in the Code of Massachusetts Regulations at 940 CMR 3.00.
- 27. 940 CMR 3.16(2) also provides that it is a violation of the Act if "Any person . . . fails to disclose to a buyer . . . any fact, the disclosure of which may have influenced the buyer not to enter into the transaction . . . ."
- 28. Under 940 CMR 3.16(3), a violation of the provisions of 105 CMR 590.000 is also a violation of G.L. c. 93A.
- 29. The violations of these statutes and regulations constitute unfair or deceptive acts or practices under G.L. c. 93A.
- 30. On June 20, 2003, the plaintiff sent to the defendants a written demand for relief, in accordance with G.L. c. 93A, §9, which demand was received by defendants

Filed 09/12/2005

- McCoy and Colley/McCoy on June 24, 2003.
- 31. Defendants McCoy and Colley/McCoy responded to said demand letter on or about August 8, 2003.
- 32. Defendants McCoy and Colley/McCoy's response was not a reasonable written tender of settlement in view of the damage sustained by the plaintiff.
- 33. Defendants McCoy and Colley/McCoy's use or employment of the unfair or deceptive acts or practices alleged above constituted willful or knowing violations of G.L. c. 93A, §2, and the Regulations of the Attorney General promulgated thereunder.
- 34. Defendants McCoy and Colley/McCoy's refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the acts or practices complained of violate G.L. c. 93A, §2, and the Regulations promulgated thereunder.
- 35. As a direct and proximate result of defendants McCoy and Colley/McCoy's acts and omissions, the plaintiff has suffered severe and permanent physical injury, pain and mental anguish.

## RELIEF REQUESTED

WHEREFORE, the plaintiff demands judgment against the defendants McCov and Colley/McCoy as follows:

- A. On the First Claim, in an amount which is fair, just and adequate for the injuries sustained, and the pain and suffering endured, plus interest and costs of suit.
- B. On the Second Claim, in an amount which is fair, just and adequate for the injuries sustained, and the pain and suffering endured, plus double or treble damages. attorneys fees, interest and costs of suit.

# PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS.

By her Attorney,

CARMEN L. DURSO, ESQUIRE

B.B.O. # 139340

100 Summer Street, Suite 3232

Boston, MA 02110-2104

617-728-9123

September 12, 2005

#### UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

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TITLE	AND NU	MBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 4	0.1(E).
N/A			
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J\$ 44 (Rev. 07/89)

## **CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filling and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS			DEFENDANT	S			
SHARON SEAVEY	•	a the state of the	RICHARD P.	MCCOY, PARTNER, C	OLLEY MCCOY		
			COMPANY a	nd COLLEY/MCCOY M	IANAGEMENT		
			GROUP, INC	). · · · · ·			
(b) COUNTY OF RESIDEN	ICE OF FIRST USTED PLA	UNTIFF ESSEX	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT N.H.				
	EPT IN U.S. PLAINTIFF CA		NOTE: IN LAND CO	(IN U.S. PLAINTIFF CASES: NOEMNATION CASES, USE THE			
·			TRACT OF L	AND INVOLVED			
(C) ATTORNEYS (FIRM NA	ME, ADDRESS, AND TELE	EPHONE NUMBER)	ATTORNEYS (IF KN	OWN)			
CARMEN L. DURSO,	ESQUIRE / BBO #	139340					
100 SUMMER ST., SU	IITE 3232, BOSTO	N, MA 02110-2104	<b>,</b>				
TEL: 617-728-9123	/ dursolaw@tiac.ne	et					
II. BASIS OF JUR	ISDICTION PA	CE AN × IN ONE BOX ONLY)	III. CITIZENSHIP C	F PRINCIPAL PARTI	ES (PLACE AN X IN ONE BOX LAINTIFF AND ONE BOX FOR DEFENDANT)		
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MAINTAINING RE  V. NATURE OF SU  CONTRACT  110 Insurance 120 Manne 130 Maer Act 140 Negotiable instrument 150 Recovery of Overpayment Augment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Edit Veteraris) 153 Recovery of Overpayment 160 Succidations Sensetts 160 Succidations Sensetts 190 Oner Contract 195 Contract Product Liability REAL PROPERTY 210 Land Condemnation 220 Forecloarse 220 Forecloarse 220 Forecloarse 220 Forecloarse 240 Toris to Land 245 Toris Toris Company VII. ORIGIN  1 Original 250 Proceeding  VII. REQUESTED COMPLAINT:  VIII. RELATED CA	STAURANT PREM  TOP  PERSONAL INJURY  310 Applane  315 Airplane  315 Airplane  310 Asplane  320 Assault, Usel & Stander  330 Federal Employers' Liability  340 Marine  345 Marine  345 Marine  345 Marine  345 Marine  346 Merior Product Liability  350 Motor Vehicle  355 Motor Vehicle  2350 Motor Vehicle  2441 Veting  442 Employment  443 Housing  444 Vetilare  444 Vetilare  444 Vetilare  444 Other Chill Rights  1 2 Removed from  State Court  IN CHECK IF THIS IS  UNDER FR.C.R 23  ASE(S) (See instructions	IISES, CAUSING F  IE BOX ONLY)  RTS  PERSONAL INJURY  362 Personal injury— Med Malpractice  365 Personal injury— Product Lability  368 Asbestos Personal Injury Product Lability  PERSONAL PROPERTY  370 Other Fraud  371 Twith in Lending  380 Other Personal Property Demage Product Lability  PRISONER PETITIONS  Sto Motions to Vacate Sentence Habeas Corpus:  530 General  535 Death Penalty  540 Wanderma & Other  550 Other  (PLACE AN × II  3 Remanded from Appellate Court  A CLASS ACTION  8):	FORFEITURE /PENALTY    510 Agriculture   520 Other Food & Drug   625 Drug Related Secure of Property 21 USC 881   530 Liquor Laws   640 R.R & Truck   650 Airline Regs   640 R.R & Truck   650 Airline Regs   640 Cocupational   Safety/feath   690 Other   LABUR   710 Feer Labor Standards   720 Labor/Agms. Relations   730 Labor/Agms. Relations   740 Reinhard Labor Lifegetion   740 Reinhard Labor Lifegetion   791 Empl. Res. Inc.   Security Act   N ONE BOX ONLY) Trans   Reopened (security Act   DEMAND	BANKRUPTCY    422 Appeal   28 USC 158   223 Withdrawal   28 USC 157     423 Withdrawal   28 USC 157     424 Appeal   28 USC 157     425 Withdrawal   28 USC 157     426 Copyrights   380 Pacent   380 Pa	OTHER STATUTES     400 State   Reapportionment     410 Archives     430 Banks and Banking     450 Commerce/CC Retex/eh     460 Deportation     470 Ractivater Influenced and Compt Organizations     510 Selective Service     850 Securities/Commodities/Exchange     2 USC 3410     891 Agricultural Acts     600 September   2 USC 3410     892 Economic Shabitization     470 Reconomic Shabitization     894 Energy Allocation Act     895 Environmental Metters     895 Environmental Metters     896 Environmental Metters     897 Onestinational Act     900 Appeal of Fee Determination     Under Equal Access to Justice     550 Constitutionality of State Statutes     580 Other Statutory     Actions     Appeal to District     7 Judge from     Agistrate     Judgment     91 demanded in complaint:     14ND:   24YES     100		